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**Martin Luther King, Jr., Civil Disobedience and the Duty to Obey the Law:
Where Do We Go From Here?**

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Not so long ago, several friends joined approximately 40,000 others in DC demanding action on climate change and opposing the Keystone pipeline. They left Illinois committed to breaking the law and getting arrested in front of the White House, as they put it, in the spirit of Dr. King. The law they broke when they got there was an anti-trespass type ordinance. They sat and waited to be ordered to move. They refused. They were arrested, fined and released the same day.

Being a lawyer, the son of a New York City police officer, and sometimes an activist I couldn't help but wonder when if ever it was okay to violate a law that is not itself unjust, and what Dr. King actually thought about civil disobedience. The paper begins with a brief argument that democratic law is a moral idea. It then discusses in detail the thoughts and actions of Dr. King as they relate to the law, and to law-breaking as a movement tactic. It also briefly looks at contemporary activist thinking on disruption, violence, and law-breaking as a tactic of social change.

“We will March through the South the way Sherman did. We shall pursue our own ‘scorched earth’ policy and bury racism to the ground-nonviolently. We shall crack the system into a thousand pieces and put them back together in the image of democracy” (words John Lewis was compelled to delete from his Lincoln Memorial speech August 1963, quoted in Branch, 1989, pp. 873-74).

Introduction

The Law as a Moral Idea. Without law as its glue there can be no society, certainly no democracy. Accepting Aristotle's understanding of human nature, of man as a political animal, finesses much modern understanding and debate about how wired we are. Is there anything about humans that is inherent, innate? How malleable, how educable are we?

Aristotle has it that we are social creatures with a natural inherent drive. Our social nature requires and results in the development of norms of behavior, that is, expected behavioral regularities and sanctions to enforce them -- in other words “laws.”

People have found norms, duties, rights, and laws in divine revelation, in feelings and sentiments such as tit for tat, or in gratitude, mutual consent, custom, reason, utility and efficiency. And concomitantly they have found the need for sanctions or incentives, the proverbial sticks and carrots, to sustain the norms.

In a democracy, what makes norms in the form of law legitimate, that is, recognized as entailing a duty to obey? Again, simplifying, the preconditions for legitimacy include functioning

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institutions to aggregate, align, codify, and actualize the interests of citizens of equal worth and participatory capacity and opportunity. A failure in any of these elements raises doubts about this legitimacy about the duty to obey.

Nothing Works

Scholarship over the last half of the 20th century has established that none of the major structuring or ordering systems of society work the way they should. (Kendall 2004). Each should work in a way that results in a good and just society. People, markets, regulation, litigation, and democracy are subject to both endogenous and exogenous limitations. I will briefly comment on people in this context because of the prevalence of the notion that if only people would behave properly all would be well. The other normative systems are more widely recognized as flawed in operation, and to discuss them even briefly would require a separate paper.

Good People. Some argue that the key requirement for a good or just society is not systems and institutions rather it is people -- good people. William Penn, whose experiences with the king contributed mightily to the development of the jury system, had this view: "Let men be good and the government cannot be bad, if it be ill they will cure it. But if men be bad let the government be ever so good they will endeavor to warp and spoil it to their turn" (Penn, 1682). However James Harrington at about the same time argued to the contrary: "'Give us good men and they will make us good laws' is the maxim of a demagogue (but) 'give us good orders and they will make us good men' is the maxim of a legislator and the most infallible in the politics" (Harrington, 1977). James Madison famously accepted this view in Federalist 51: "If men were Angels, no government would be necessary..."(Madison, 1987).

This understanding of human nature and the limitations of the other major normative or ordering systems of society, markets, regulation, litigation, and elections, make it necessary to recognize we live in a world of imperfect persons, working with imperfect institutions, making choices among imperfect alternatives.

Where do We Go from Here: Chaos or Community?

The question at the core of the struggle for justice is as set forth in the title of Dr. King's last book, published over 50 years ago in 1968, *Where Do We Go From Here: Chaos or Community?*. Dr. King identified racism, poverty, and militarism as evils deeply embedded in American society. This "collision of immoral power with powerless morality ... constitutes the major crisis of our time" (King, 2010, p. 38). The immoral powers that support racism, poverty, and militarism are respectively the prejudice and blindness of white supremacy, materialism, and fear. The powerless morality is discernible in our imperfect legal system. Thus, Dr. King concluded that only "a new set of values" could redeem "our beloved nation" (King, 2010, p. 142).

There can be no doubt that the legal standing of the victims of racism has been transformed positively in the last 60-plus years. Certainly, since *Brown v. Board of Education*, there has been progress. This despite frequent steps backwards like *Washington v. Davis* when the Supreme Court decided that real and substantial negative impact of government actions affecting human rights was insufficient to heighten its concern about the constitutionality of such actions; and

more recently the gutting of the Voting Rights Act of 1965 in *Shelby County v. Holder*. And, as Ibram X. Kendi makes clear in his book *Stamped From the Beginning: The Definitive History of Racist Ideas in America* (2016) racist ideas have been and continue to be pervasively present in society and the culture. The poor continue to suffer today. And clearly the impact of the war on terror, and militarism, generally have made matters more limiting and threatening. As Dr. King said “The legal structures have in practice proved to be neither structures nor law. The sparse and insufficient collection of statutes is not a structure; it is barely a naked framework. Legislation that is evaded, substantially nullified and unenforced is a mockery of law” (King, 2010, p. 10).

Power and Social Change. If there is hope in the constitutional order despite the limitations of the legal system, how can that hope be actualized? How can the limitations be overcome? Dr. King recognized that “people struggling from the depths of society have not been equipped with knowledge of the science of social change” (King, 2010, p. 146). He is so concerned about this that he decides “we must subordinate progress to studying the levers of power” (King, 2010, p. 146). And clearly Dr. King shares the insight of Frederick Douglass that “power concedes nothing without a demand. It never did and it never will” (Douglass, 1857).

So what is power? It is commonly understood as both power “to” and power “over.” Dr. King’s thinking on power is much more radical than these commonplaces. He argued that “Power properly understood is the ability to achieve purpose. It is the strength to bring about social, political, and economic changes. It is not only desirable but necessary to bring about the demands of love and justice” (King, 1998, pp. 324-25).

My 40 plus years involvement working for a more justice society as an activist, a board member of social change organizations, a lawyer, and a scholar of sorts have been inspired by the “direct action” organizing approach of the Illinois Public Action Council and that of the Midwest Academy. The three key organizing principles of the Midwest Academy are: it aims to win real, immediate, concrete improvements in people’s lives; it gives people a sense of their own collective power; and it attempts to alter the existing relationships of power. Without strategic issue-selection and the targeting of those whose decisions actually affect people, social activism is often merely tactical and symbolic (Bobo, Kendall, and Max, 2010). While disruptive of the routines of the establishment, tactical actions alone do not and cannot change the existing relationships of power. Only if people understand and exercise their collective power strategically will laws and institutions be changed and the changes institutionalized and actualized.

According to Taylor Branch’s three volume *opus* on *The King Years* (1988, 1998, 2006) as early as the late 50s Dr. King intuited these organizing principles. As Branch wrote: “From the bus boycott through the Freedom Rides on into Albany, King had entered popular movements more or less haphazardly. Now his public stature, principles, and pragmatism demanded that he design his own test. He needed advance planning, training, and mobilization on a specific rather than a general target area ... King announced his resolve to swear off spontaneous rescue missions. ‘I don’t want to be a fireman any more’” (Branch, 1988, p. 632). While debates in the movement about tactics and strategy became more intense, Dr. King did not waiver in his resolve. Equally resolute was he about his conviction “that nonviolent resistance was the most potent weapon available to oppressed people in their struggle for freedom; ... that nonviolent resistance when

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planned and positive in action could work effectively even under totalitarian regimes.” (King, 1998, p.134; p.129).

Nonviolent Resistance

As is commonly known, Dr. King opposed as a matter of principle the use of violence to effectuate social, political, or economic change. Nevertheless, the question of violence regularly arose in response to the violence of the Klan, the police, and the racist mobs as they sought to enforce segregation and Jim Crow laws and customs. Dr. King debated with Malcolm X, with some in SNCC, with many in the Black Power movement, and others about violence. He shared the moral outrage of his discussants, but he insisted that he “could imagine nothing more impractical and disastrous” (King, 2010, p. 27). Violence would give racists a ready justification and excuse for increased violence. He also importantly believed that violence corrodes the soul of the violent person.

Dr. King’s basic philosophy was variously called nonviolent resistance, noncooperation, and passive resistance. Important for grasping the breadth and depth of his understanding of these terms, we need to recognize that “in the first days of the protests none of these expressions was mentioned; the phrase most often heard was ‘Christian love’ ” (King, 1998, p. 67). Helpfully King asked and answered three questions to make clear what love in the form of nonviolent resistance is:

1-How do we love our enemies? a) develop and maintain a capacity to forgive; b) recognize that the evil deed is not all that the enemy is; and c) seek not to defeat or humiliate, rather to win understanding and friendship.

2-Why should we love our enemies? a) returning hate for hate can only multiply hate, only love can drive out hate; b) hate scars the soul and distorts the personality; c) only love can transform an enemy into a friend; and d) the ultimate reason, Jesus said to do so (King, 2015, pp. 55-64).

3-Just what is this thing called nonviolent resistance (NVR)? a) NVR is not a method for cowards. As Gandhi said “if cowardice is the only alternative to violence, it is better to fight”; b) NVR is active resistance to evil; c) NVR attacks the evil not the person doing the evil acts; d) NVR requires a “willingness to accept suffering without retaliation”; e) NVR “avoids not only external physical violence but also internal violence of spirit”; and f) NVR is “based on the conviction that the universe is on the side of justice” (King, 2015, pp. 39-53).

The Montgomery Bus Boycott. In December 1955, four days after Rosa Parks was arrested for refusing to give up her seat on a bus, Dr. King was elected President of the newly formed Montgomery Improvement Association. The people gathered in the church that night couldn’t help but wonder if what they were doing was right, or made any sense. Dr. King linked the personal, the political, and the metaphysical in his response to their uncertainties: “We are not wrong in what we are doing. If we are wrong the Supreme Court of this nation is wrong. If we are wrong the Constitution of the United States is wrong. If we are wrong God Almighty is wrong. If we are wrong Jesus of Nazareth was merely a utopian dreamer that never came down to earth ... we are not afraid of what we are doing because what we are doing is within the law

... we are using the tools of justice. Not only are we using the tools of persuasion, but we've come to see we've got to use the tools of coercion. Not only is this thing a process of education (for us, and for the people and officials of the City) but it is also a process of legislation (of creating a new social norm, one of love and justice)" (King, 1998, pp. 60-61).

Especially after his visit to India, the inspiration of Gandhi began to exert its influence. Two months into the bus boycott Dr. King's home was bombed. A crowd of friends and supporters gathered and some began to reach for their guns. He addressed them solemnly: "We believe in law and order. Don't get panicky. Don't do anything panicky at all. Don't get your weapons. He who lives by the sword will perish by the sword ... We are not advocating violence ..." (King, 1998, p. 80).

During one of the debates about the Black Power movement Dr. King wrote: "the debate over the question of self-defense is unnecessary since ... the question was not whether one should use his gun when his home is attacked, but whether it was tactically wise to use a gun while participating in an organized demonstration" (King, 1998, p. 317). This seeming ambiguity about self-defense was resolved as he thought through his response to his house being bombed. Initially, at the urging of others, Dr. King applied for a license to carry a gun in his car. The Sheriff refused. As he thought about the matter he came to the conclusion that both the friendly advice and his own initial thinking were wrong: "How could I serve as one of the leaders of a nonviolent movement and at the same time use weapons of violence for my personal protection?" (King, 1998, p. 82). In place of the guns, outdoor lights and an unarmed watchman protected his house.

In response to the success of the bus boycott, the City obtained an injunction limiting activity in support of the continuing boycott; e.g., obtaining vehicles to drive boycotters to work. Support of the boycott nevertheless continued. As a result, Dr. King and others were found by the local court to be in violation of the injunction. He was sentenced to 386 days in jail or a \$500 fine. Upon leaving the court Dr. King thought that while he was a convicted criminal, he was a proud to be so: "It was a crime of joining my people in a nonviolent protest against an unjust law. It was the crime of seeking to instill within my people a sense of dignity and self-respect. It was the crime of desiring for my people the unalienable rights of life, liberty, and the pursuit of happiness. It was above all the crime of seeking to convince my people that noncooperation with evil is just as much a duty as cooperation with good" (King, 1998, pp. 87-88).

War, Poverty and Inequality. Dr. King was awarded the Nobel Peace prize in 1964. In his Nobel lecture, in addition to his words about war and peace, he emphasized the need for "an all-out world war against poverty" (King, 1998, p. 262). He was quite clear about the link between the three ideological injustices operating in the world: militarism, materialism, and racism. He was even more emphatic about the presence of these three injustices and their connectedness in *Where Do We Go From Here?*. He explicitly criticized both traditional capitalism and classical communism. Capitalism "has created conditions permitting necessities to be taken from the many to give luxuries to the few"; Communism "reduces men to a cog in the wheel of the State." Rather than individualism or collectivism, "the good and just society is ... a socially conscious democracy which reconciles the truths of (each)" (King, 2010, p. 197).

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In *Stride Towards Freedom* (King, 1958) he wrote: “there was a time when I felt there was, or could be, a negative good (that) could block the spread of some negative force like Hitler ... I came to the conclusion (contra Reinhold Niebuhr) that war could no longer serve as a negative good because of the potential and actual destructiveness of modern weapons ...” (quoted in Branch, 2007, p. 395). Later, in *Where Do We Go From Here?* Dr. King wrote: “From time immemorial men have lived by the principle that self-preservation is the first law of life. But this is a false assumption. I would say that other-preservation is the first law of life” (King, 2010, p. 190). In other words, nonviolent resistance was more than a tactic: it was a transformative way of life.

Civil Disobedience

To use a phrase of John Dewey, one of the ways democracy reconciles freedom and fraternity is Law. The duty to obey the law has been, at one time or another, grounded in revelation, nature, consent, custom, reason, fairness, gratitude, and fear. As intimated at the beginning of this essay, I believe that Law, as shared democratically adopted and enforced norms, is a moral idea in that it is necessary for a dynamic and just society to function and survive. This necessity entails a duty to obey the law.

Justifications for disobedience of law, if any, differ depending on the source of the duty and how that duty is understood in its society. For instance, revelation as set forth in Christian scripture, Romans 13, requires obedience to law because all authority is from God. Scripture ultimately recognizes an exception if the human law requires an act that contradicts the law of God. Or, if the duty is grounded in gratitude, in recognition of the benefits one has received from society and its norms, obedience is required unless the harm to one resulting from obedience trumps the benefits of membership in that society. Somewhat differently, if the source of duties to society is fairness, the decision to obey turns on a utilitarian calculus of the benefits and burdens of each course of action; it seems there is no presumptive duty to obey in this view. Differently again, if the source of the duty is consent the focus shifts. Expressed consent to a law is much like a contract or promise. But what of the more common circumstance where there is no expressed consent? Consent, if any, is merely implied. In a democracy consent is implied from the opportunity to participate in a potentially effective way in the societal law-making processes.

One further preliminary before we can get to the question I began with. I think there can be inherently just laws, just in and of themselves in all circumstances; laws against torture for instance. But as early as Aristotle it has been acknowledged by philosophers and jurists that the nature of both the law itself, and of language is such that laws need to be understood and applied situationally. A classic example all US law students are familiar with is that of a “No Vehicles in the Park” law. Clearly it will be interpreted as prohibiting driving a private car through the park. Should it also be interpreted as prohibiting a child’s pedal car? Should it be interpreted as prohibiting a motorized wheel chair used by a person with a disability? Should it be interpreted as prohibiting an ambulance in the park?

Civil Disobedience: Permitted? Required? When is law-breaking permissible, if ever? When is disobedience of the law required, if ever? Following our long, but necessary introduction we can now look in some detail at Dr. King’s reflections on nonviolent resistance generally and law-breaking specifically.

At the time of the Montgomery bus boycott Dr. King felt constrained by the law. “There will be nobody among us who will stand up and defy the Constitution of the nation” (quoted in Branch, 1989, p. 140). He explicitly rejected violence but acknowledged that the boycott was not just a tool of persuasion, but also one of coercion.

Having successfully used a boycott to move towards a desegregated bus system, what tools were available to desegregate other public places? Unlike the buses and theaters where blacks had economic power to influence operations by boycotting, how were they to open “whites only” libraries, parks, and other similar places? Boycott of such places was not available as they never had access to withdraw. The movement had relied on federal government enforcement of integration orders obtained by successful litigation. Unfortunately, the control over policy exercised by southern Democrats in Congress and the racism and personal hostility of Hoover’s FBI meant that federal government law enforcement was not only passive, but often actively hostile.

By the 1962 NAACP convention Dr. King fully understood the structural limitations of the legal system. Both separation of powers and federalism, despite their substantial value, combined with regional and local politics to disorder law enforcement. He recognized that “legislation and court orders can only recognize rights. They can never thoroughly deliver them. Only when the people themselves begin to act are rights given life blood” (quoted in Branch, 1989, p. 598). As he had argued in 1957, the equal opportunity of active participation in our democracy, through the implementation of the 15th amendment adopted in 1870 guaranteeing the right to vote, was the best, maybe the only, way to remedy the government’s betrayal of racial justice.

There is a notion used by the anti-Soviet movements of the 80s to challenge the communist system that comes to mind: let us begin to live in the truth, as if we are free (Havel, 1985). In moving forward Dr. King came to see that the bus boycott and other efforts to fight segregation encouraged further positive and independent action like the student sit-ins and freedom rides. People began to shop where they wanted and when they wanted to rest and have a bite to eat they would sit down at the store lunch counter. They even went to the county office to register to vote. When these ordinary every day actions were bravely taken, change happened: there was some real and sustained success. But always and everywhere these actions were met by violence: KKK burnings of homes, schools, churches; beatings; shootings, killings; lynching; police riots; firings by employers; evictions by land owners.

Despite these important successes through courageous self-help, Dr. King knew that laws were necessary to advance freedom, equality, and justice. But he also saw that even “just” laws could be applied unjustly. Law breaking was in some cases a right, even a duty: “I submit to you that any individual who decides to break a law his conscience tells him is unjust and willingly accepts the penalty for it, is at that moment expressing the very highest respect for law” (quoted in Branch, 1989, p. 599).

Dr. King in his Riverside Church talk in April of 1967 exactly a year before he was assassinated, called for a revolution of values. Such a revolution would shift society from a thing-orientation to a person-orientation. The larger society would see that its workings produce unjust

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inequalities. He spoke of the need for the richest nation in the world to be humble in its dealings with other nations. It was past the time to recognize that war is not a just way to settle differences. War was an enemy of the poor. America's soul was being poisoned by the war in Vietnam. As King said, "A genuine revolution of values means in the final analysis that our loyalties must be to mankind as a whole in order to protect the best in individual societies. We are called to speak for the weak, for the voiceless, for those called enemies who are our brothers." He demanded that we recognize the "fierce urgency of now" going as far as urging draft resistance (King, 2015, pp. 201-217).

By Memphis, as he worked in support of the striking garbage workers, Dr. King seemed to have doubts about whether the U.S. democracy was really open to the voice of the poor. He was concerned that the flow of justice through the processes of our political-electoral-legal systems was neither substantial nor equal. The structures were failing in their duty to provide equal justice for all. Racism, poverty and war had dammed the flow.

Had he not been assassinated I believe that his way forward would have been more aggressive campaigns of nonviolent resistance justified as outlined in his "Letter From Birmingham Jail" (King, 2015, p. 127). He was unequivocal about the propriety of violating unjust laws, whether they were unjust on their face or as applied in a particular circumstance. He was clear about how one determines whether a law is just or unjust: "A just law is a man-made code that squares with the moral law or the law of God ... To put it in the words of St. Thomas Aquinas: an unjust law is a human law that is not rooted in eternal law and natural law ... Any law that degrades human personality is an unjust law ... Paul Tillich has said that sin is a separation. Is not segregation an existential expression of man's tragic separation ... Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters ... Can any law enacted under such circumstances be considered democratically structured?" (quoted in Branch, 2006, pp. 132-135).

There is a need to be more specific about the question of the legitimacy, the justice, of the law. Law's justness, its legitimacy, is to be determined first by its method of adoption -- is its formulation, adoption, and implementation open to all on a reasonably effective basis? The justice of a law must also be evaluated by its consequences; does it in operation ennoble or degrade human personality? This focus on consequences in the world as it is and on people as they are was the approach that Justice Thurgood Marshall followed on the Supreme Court. Justice Marshall cautioned the other Justices that "callous indifference to the realities of the life of the poor" would result in unjust rulings. He argued that it was perfectly proper to disagree about the meaning of the text of the Constitution and about the intent of the framers, as he and Justice Scalia did often, but it was "disgraceful for an interpretation of the Constitution to be premised upon unfounded assumptions about how people lived." He also recognized that if the law-making system left people voiceless, if law was adopted undemocratically, such laws applied to such folks was at least presumptively unjust (Kendall, 2004, pp. 572-573).

Disruption and Destruction. If one is without voice and cannot otherwise be heard, what is permissible? The famous Catholic peace activists Dan and Phil Berrigan had a voice, but were sure they were not being heard through the fog of the mutually assured destruction policies of the cold war. They defended the destruction of draft records and the damage to nuclear weapons as

antibiotic actions to eliminate the diseased property of weapons of mass destruction awash in society threatening the survival of humanity (see Nepstad, 2019).

One has to wonder what Dr. King would have thought of the Berrigan brothers' burning of draft board records or of the Plowshares actions damaging weapons of mass destruction? Based on his support of draft resistance, I think that Dr. King may well have agreed with the Berrigans' position.

In Dr. King's last year some of his rhetoric became aggressive and his metaphors militaristic. Yet he never wavered from nonviolence. For instance, in issuing the call for the Poor People's Campaign he said: "We intended to channel the smoldering rage of frustration of the Negro people into an effective, militant, and nonviolent movement of massive proportions." He argued "the American people are infected with racism – that is the peril. Paradoxically, they are also infected with democratic ideals – that is the hope."

Again, our focus here is on the legitimacy of violating a law that is not unjust. The Berrigans violated laws protecting rights in property. Their rationale was that the property itself had no legitimate purpose. Its use, even threat to use, was itself immoral, unjust. Yet while it may feel right to do physical harm to an unjust draft system or a weapon of mass destruction, just as it would have been right and just to destroy the crematoria at Auschwitz, it feels much less right and just to destroy the pizza shop in Spike Lee's *"Do the Right Thing."*

Today, the tactics of Occupy, Black Lives Matter, and others raise these challenging and urgent questions. Is it permissible to disrupt business as usual; to occupy public space, block traffic, or otherwise prevent ordinary people from going about their daily routines? Certainly it is right and good to protest, to demonstrate one's views on matters of concern, to work to change the system. Such action is and ought to be allowed, even encouraged and protected. This right even permits what in effect are short-term violations of the law. For instance, in a situation involving a mass protest it is common to issue warnings that the behavior is considered to be in violation of the law, before taking enforcement action. And often, there are negotiations with permitting authorities as to how close to the line the demonstrators will be permitted to go; just how much disruption will be permitted. In this context, which is at least the theoretical, pragmatic norm, unless a law is itself unjust or applied unjustly, it ought not be violated.

Occupy, Black Lives Matter, and others have rejected this view. They have argued correctly and with much justification, that it is too easy for too many people to live their lives without ever having a face-to-face encounter with the injustices systematically imposed on the marginalized and left-outs. That said, the results of their disruptions and law-breaking actions have been mixed. Yes, now they are heard and have been given the proverbial seat at some tables. However, their voices are still not equal and the larger society has hardly begun to recognize the truth in their message: that the system operates in such a way that, whatever good it otherwise does, it is unjust in many of its operations to many people.

It is important to acknowledge that the ethical test of advocacy is not just effectiveness, and that significant and substantial incremental progress is valuable. But are there not also additional questions raised by disruption as a tactic, especially if it is also in violation of the law? Don't we

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all have some right to be disengaged from our neighbors, a right to some private time and space? How responsible are we for the actions of others? Are we our brothers' keepers? And even if we are, sadly there are many very bad things going on in the world; hunger, disease, homelessness, unemployment, domestic violence, lawless law enforcement -- in Dr. King's words, poverty, war, and racism. While each of us has an affirmative duty to do something, no one can do everything. And aren't we all entitled to determine what duties we have and their priorities? Is it permissible to coerce our neighbors into joining our cause, to at least to understand it? As mentioned earlier, Dr. King felt comfortable using coercion as a tactic. The civil rights movement was coercing people who were affirmatively enforcing, supporting or practicing racism. But is it equally just to coerce people if they are not actively doing unjust things? None of this is easy or simple to answer as the majority of people benefit at least indirectly from much of the injustice in the social order.

Phrased another way, are there any innocent people? Dr. King in his "Letter From Birmingham Jail" to white church leaders suggested perhaps not. He challenged "white moderates" and especially religious leaders to "understand that law and order exist for the purpose of establishing justice and when they fail in this purpose they become dangerously structured dams that block the flow of social progress" (King 2015, p. 135). He argued that it follows from that understanding of the law that those who are not themselves victims of injustice, and perhaps even privileged by the injustice, have a duty to recognize the need and right of the oppressed to take strong, persistent, determined and powerful, even "extreme action" in the pursuit of justice (King 2015, p. 138). If the "moderates" cannot or will not join in the efforts to challenge the unjust laws and customs, they do have an obligation to, in my words, get out of the way, certainly at least to understand. Dr. King feared that such "moderates" who feared disorder and urged patience were a bigger stumbling block than even the racist White Citizens Councils. But he did not lose hope in the power of nonviolent resistance to move people and society.

The Time is Now

Tragically, there is today increasing evidence of a loss of faith in the system, a loss of hope for justice. There are demands for resistance, even revolution. These days many activists have concluded that the system of governance of the U.S. is inherently unjust: that reform, incremental change through advocacy, is not possible. The law as a major support for an unjust system need not be obeyed. Chris Hedges and Joe Sacco (2012) see *Days of Destruction, Days of Revolt* ahead.¹ They have identified 19 indices of injustice in the American system as it now functions. These include the poverty rate, the level of military spending, the infant mortality rate, and the size of the prison population. These gross and inexcusable injustices are most present in what Hedges and Sacco call "sacrifice zones," places like Camden, Appalachia, and Detroit. The Englers (2016) in their book *This Is An Uprising: How Nonviolent Revolt is Shaping the Twenty-first Century* look to the efforts and tactics used recently around the world to challenge tyrannies and oust autocrats to remedy the injustices in the U.S. The results of such nonviolent activism, such as during the Arab Spring, have been mixed (see also Chenoweth and Stephan, 2011). The goal of what they call "momentum driven organizing" (MDO) is to bring down the system. First create a whirlwind of escalating disruption, then harness it and continue until the system collapses (Engler and Engler, 2016, pp. 178-179). Are such tactics appropriately used in a democratic context? I think not. Neither of the concepts, autocracy or tyranny, used to justify MDO, describes America today. Challenges such as climate change or economic justice, and the

other injustices identified by Hedges and Sacco are prevalent and daunting, but, at least as yet, the US is neither an autocracy nor a tyranny. Its injustices are not beyond democratic remedy.

Further, even if the situation today is truly tyrannical, and despite a specific reference to the Southern Christian Leadership Conference (SCLC) as an example of their kind of organizing, the approach proposed by the Englers fails to include two essential elements of Dr. King's approach. One is the Love element that encompasses both the love of the oppressor, and the growth of self-love experienced by the oppressed, what Dr. King called the development of a sense of "somebodiness." The Englers rather seek to "polarize" people (Engler and Engler, 2016, p. 200). The other missing element, central of Dr. King's methodology, is their conspicuous failure to recognize the strategic necessity of institutionalizing, making enforceable, and enforcing the victories won. After the system collapses, where do we go from there? Rather than Dr. King's Beloved Community as the answer to a similar question, there is chaos.

Howard Caygill in his book *On Resistance: A Philosophy of Defiance* reveals the assumptions underlying these kinds of destructive tactics. He argues that the Resistance should follow the insights of Clausewitz in *On War*: enhance your capacity to resist and compromise the capacity of your enemy. Resistance is not about reasonableness and compromise. It is about what he calls "strategy" that is working together to build power to be better able to meet the enemy. In other words, the Resistance should see politics as war by other means, with all that implies. Despite Caygill's militaristic rhetoric and escalation of all challengers into "enemies," he does see space for nonviolence as a tactic. But clearly nonviolence is not central nor is it the loving nonviolent way of life Dr. King lived and died for. Dr. King was all about redeeming the promise of the American system to create community, not the chaos as urged by the Hedges and Sacco, the Englers and Caygill.

Conclusion

Let us return to the quote from John Lewis we began with. Dr. King, despite everything, never lost faith that the arch of the universe bends towards justice. There is no basis to doubt that his answer to the question "where do we go from here: chaos or community?" is community. But to avoid chaos in the struggle for justice it is necessary to recognize certain timeless truths for which Dr. King gave his life. We are all equal. We are all imperfect. No human system is or can be perfect. We are faced with imperfect societal alternatives. Humility and mutual respect are preconditions for freedom and democratic governance.

With those recognitions before us, it seems to me that the proper starting point for analysis of civil disobedience is a presumption that laws should be obeyed. As was recognized as far back as Aristotle, all government rests on opinion, that is, the good will of the people. If they come to believe the system is so corrupt that it is no longer just, as increasing numbers these days seem to believe, power gets substituted for the will of the people, that is, for the rule of law. More and more issues become debates about absolutes. There is less room for compromise. Opponents cease to be considered "loyal" and are considered "the enemy" threatening the survival of the system. War becomes the metaphor for democratic practice.

Too often in its quest for law and order society fails to recognize the difference between a police and a military approach to social unrest. These two forces are and should be separate and

*Martin Luther King, Jr., Civil Disobedience and the Duty to Obey the Law:
Where Do We Go From Here?*

distinct. Ideally, the police are from the community; the people are “neighbors”; their relationship with the people is long term; the goal is order; people are presumed to be innocent; and the measure of success is compliance with the law. The military, by contrast, operates in a foreign land; the people are “other”; its relationship with the people is short term; the goal is control of territory; the people are the enemy; and the ultimate measure of success is victory. As happens often, the failure to recognize these differences results in neither law nor order; certainly not justice. Rather the result is tragedy.

In the words of Dr. King “what is needed is a realization that power without love is reckless and abusive, and love without power is sentimental and anemic.” The system has been cracked open wider still since John Lewis spoke in 1963. Its reconstruction can only be advanced when all of society comes to recognize, again in Dr. King’s words, that “the American people are infected with racism [and militarism and economic inequality] -- that is the peril. Paradoxically, they are also infected with democratic ideals [and law as a moral idea] and that is the hope.”

References

- Bobo, K, Kendall, J, & Max, S. (2010). *Organizing for Social Change: Midwest Academy Manual for Activists* (4th edition). New York: Seven Locks Press.
- Branch, T. (1988). *America in the King Years 1954-63: Parting the Waters*. New York: Simon and Schuster.
- Branch, T. (1998). *America in the King Years 1963-1965: Pillar of Fire*. New York: Simon and Schuster.
- Branch, T. (2006). *America in the King Years 1965-1968: At Caanan’s Edge*. New York: Simon and Schuster.
- Caygill, H. (2013). *On Resistance: A Philosophy of Defiance*, London: Bloomsbury.
- Chenoweth, E., & Stephan, M. J. (2011). *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict*. New York, NY: Columbia University Press.
- Douglass, F. (1857). *West India Emancipation*. www.blackpast.org.
- Engler, M. & Engler, P. (2016). *This Is An Uprising; How Nonviolent Revolt is Shaping the Twenty-first Century*. New York: Nation Books.
- Hamilton, A, Madison, J & Jay, J. (1987). *Federalist Papers*. New York: Penguin.
- Harrington, J. (1977). *The Political Works of James Harrington*, Pocock, J.G.A., ed. London: Cambridge.
- Havel, V. (1985). *The Power of the Powerless*. London: Routledge.
- Hedges, C & Sacco, J. (2012). *Days of Destruction Days of Revolt*. New York.
- Kendall, W. (2004). Reflections on Judicial Review and the Plight of the Poor in a World Where Nothing Works. *John Marshall Law Review* vol. 37, no. 2, p. 555-575.
- Kendi, I. X. (2016). *Stamped From the Beginning: The Definitive History of Racist Ideas in America*. New York: Nation Books.
- King, Jr., M.L. (2010) *Where Do We Go From Here: Chaos or Community?* Boston: Beacon Press.
- King, Jr., M.L. (1998). *The Autobiography of Martin Luther King Jr.* Boston: Grand Central Publishing.
- King, Jr., M.L. (2015). *The Radical King*. Boston: Beacon Press.

- Nepstad, Sharon Erickson. (2019). *Catholic Social Activism: Progressive Movements in the United States*. New York, NY: New York University Press.
- Penn, W. (1682). Preface to the Frame of Government of Pennsylvania 1682.
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